



Montana Fish, Wildlife & Parks

**Region 1
490 N. Meridian Road
Kalispell, MT 59901**

**Decision Notice
for Land Exchange between Pablo Wildlife Management Area
and Private Property adjacent to Ninepipe Wildlife Management Area**

October 22, 2009

Proposed Action

Montana Fish, Wildlife, & Parks (FWP) proposes to exchange of approximately 223 acres of state-owned land in the northern portion of Pablo Wildlife Management Area (Pablo WMA) for 240 acres of private property adjacent to the southwest portion of Ninepipe Wildlife Management Area (Ninepipe WMA) in order to preserve the diverse array of upland and wetland species present in that area. Acquisition will also provide for new habitat management activities and recreational access.

The purpose of the proposed action is to benefit wildlife near Ninepipe WMA, primarily waterfowl and upland game birds, and preserve wetland habitat, while providing recreational access.

Public Process

FWP is required by the Montana Environmental Policy Act (MEPA) to assess potential impacts of a proposed action to the human and physical environment. In compliance with MEPA, an Environmental Assessment (EA) was completed for the proposed project by FWP and released for public comment on September 8, 2009.

Public comments on the proposed action were taken for 30 days (through October 9, 2009). Legal notices were printed in the Kalispell's *Daily Inter Lake*, *Lake County Leader*, *Missoulian*, and Pablo's *Char-Koosta News*. Furthermore, the EA was posted on the FWP webpage: <http://fwp.mt.gov/publicnotices/> and distributed to neighboring landowners and tribal representatives.

A public meeting was held at the Ninepipes Lodge in Charlo, Montana, on September 22, 2009, to coincide with the public comment period for the EA. A total of 10 people participated in the meeting.

Summary of Public Comment

USFWS received no comments and FWP received 13 written comments, with 9 in support of the exchange, 2 opposed, and 2 undefined. At the public meeting in Charlo, all 10 public comments were in support of the project.

There were 9 comments in support of the proposal, and all 10 of the meeting attendees were in support of the proposal. Below is a summary of the comments received from those who had questions and concerns with regard to this proposal and FWP responses to the feedback:

- 1) The tract described in the draft environmental assessment as Parcel #2 (63.29 acres) of the Pablo property does not currently exist as a tract of record. How will parcel be created so it could be deeded to a new landowner?

FWP response: If the exchange proposal is approved by the appropriate state and federal authorities, FWP will work with a professional surveying company and Lake County to complete a boundary line adjustment between the proposed disposal portion of FWP Parcel 2 and remaining FWP land at Pablo WMA. Preliminary surveying has been completed and is pending submission to the county approval process until after all the state and federal approvals for the exchange have been received. FWP did not want to proceed with any land divisions until we knew the proposed action was approved.

- 2) According to the Lake County Clerk and Recorder the tract described as Parcel #1 (160 acres) of the Ninepipe property currently exists as two separately deeded 80 tracts of record.

FWP response: The 2008 tax bill as well as the latest title commitment show the legal description for Parcel 1 of the Ninepipe property as the SE1/4 of Section 9 (160 acres) not as two separate 80-acre tracts. In addition, the USFWS easement prohibits "subdividing or de facto subdividing" so the entire ownership (both Ninepipe Parcel 1 and 2) was considered one "larger parcel" for appraisal purposes. The draft EA shows it as two parcels for literary descriptive purposes only. Initial exchange negotiations involved only Parcel 1, but later were expanded to include the entire ownership. We understand how this might be confusing to the reader.

- 3) The EA states that the Pablo tract is a dry parcel when a portion of it is currently irrigated under the Flathead Irrigation Project.

FWP response: It is true that FWP is assessed by the Flathead Irrigation Project (FIP) for 9.8 potential irrigable acres (per phone conversation with Sue Butler of FIP) on land lying east of the ditch just east of Pablo Parcel 2 and for additional acreage south of the county road, but it has not been irrigated for many years. FWP will be retaining ownership of most of the land through which the irrigation ditch flows as well as the land east of the ditch that is assessed by FIP (east of Parcel 2 in the N1/2SW1/4 of Section 21, T22N, R20W). FWP will be retaining all of the acreage that is assessed by the Flathead

Irrigation Project. None of the land being disposed of by FWP is served by FIP. FWP has 3 "irrigation tracts" at Pablo:

Lot 2, SENE Sec 34-22-20 ... 12.0 ac (not part of trade) SE of NWR

N1/2 SW Sec 21-22-20 ... 9.8 ac (east of canal, to be retained by FWP)

Lot 12 SWSE Sec 21-22-20 ... 32.0 ac (south of N. Reservoir Rd., to be retained by FWP)

- 4) Appraised price of the Pablo tracts seems low compared to similar tracts in the area: \$996,000 for 240 acres = \$4150/acre (realtor.com). The Ninepipe appraisal seems low compared to similar tracts in the area: \$500,000 for 140 acres = \$3570/acre (realtor.com). Does the appraisal include three tracts for the Ninepipe land? Does it acknowledge the limited development potential based on the existing conservation easement?

FWP response: The appraised values were established as of November 2008 by a local team of certified fee appraisers and then reviewed by an independent fee review appraiser from Missoula. The appraisals were required to meet the requirements of both the Uniform Standards for Professional Appraisal Practice as well as the Uniform Appraisal Standards for Federal Land Acquisition since federal financial aid assisted FWP funding for the Pablo acquisitions. It was a difficult appraisal problem with significantly changing real estate market conditions and application of federal appraisal rules. The potential use and value for each property was researched, analyzed, and evaluated (including the impact on value of the 1998 conservation easement at Ninepipe).

The FWP Pablo parcels appraised for \$3000 - \$2700 per acre. The Ninepipe property, encumbered by the conservation easement, appraised for \$2500 per acre. It is likely the Ninepipe property would have appraised considerably higher without the conservation easement. The other interesting property values you provided are listings for sale, not comparable sales.

- 5) No acknowledgement that the landowners of the Ninepipe property were already paid for the conservation easement on their property with 245,800 tax dollars.

FWP response: Correctly, page 4 of the EA discusses the terms of USFWS easement, but not the price paid in 1998. Typically this information is confidential in private transactions, but became a part of the public record when the price was disclosed in the recorded document

- 6) Section 1.A. Does not mention or consider the conservation easement on the Ninepipe property. Section 1.B. States the Pablo property is not irrigated. This is not an accurate statement; it is currently assessed for irrigation water under the FIP. It should state the portion of the property, which contains "prime farmland if irrigated" soils, is located west of the canal, which is not currently irrigated under the FIP. Section 1.A. Doesn't discuss that the Pablo property would be remove from public recreation and habitat preservation.

FWP response: The EA attempts to describe existing physical, biological, and socio-economic conditions in this section. The easement at Pablo is described on page 13 and in the previous section "Purpose and Need for Action" on page 4, and we feel it would be redundant to describe it again in this section. As stated above, although FWP is assessed for available FIP irrigation, none of the land to be exchanged has ever been irrigated or can currently be irrigated. It is conceivable that a new owner could possibly irrigate portions of the land, either with a private well or negotiate some future water use from FIP.

- 7) The following questions were addressed together.
- a) Section 4.A. This section doesn't discuss the limitations regarding groundwater resources in the area of the Pablo property. It should discuss the ability to develop these tracts with individual wells and how that will impact the groundwater resources in the area.
 - b) Section 7.A. This section does not acknowledge there is an existing perpetual conservation easement on the Ninepipe property that was intended for habitat preservation when the money was spent to purchase it. It should discuss how the proposed alternative would change the existing conditions.
 - c) Should discuss Lake County Density Regulation implications on both properties, not only the Pablo property. The density regulations do not establish a minimum lot size or require "large acreages" as the EA states. The Regulations limit the number of units developed on the parcel and go so far as to encourage tracts less than 3 acres with conservation of land area by providing an incentive which includes additional lots.

FWP response: The EA can only describe hypothetical future uses and possible consequential impacts on the Pablo tracts at this time. On pages 20 through 26, we attempted to describe possible changes in land use, soil, air, water, noise, vegetation, and wildlife & public recreational use if the exchange is completed. We noted the potential impacts to public access at Pablo on pages 23 and 26. At this time, we do not know if groundwater development will occur in the future at Pablo. FWP understands there is a wide disparity in well depths in this area. Because future possibilities at Pablo are so hypothetical, we tried to emphasize throughout the EA that potential changes in use would be subject to local planning and other state, tribal, and federal regulations.

Potential changes in management on the Ninepipe property are found primarily in the following sections: Land Use (page 20), Water Resources (page 22), Wildlife (page 23), and Recreation (page 26). If the exchange were completed, FWP management would be subject to the terms and conditions of the USFWS easement. As you can see from the 7/26/09 letter attached on page 30 of the EA, the USFWS is supportive of the proposal. We do not agree that there will be any impact at Ninepipe regarding density regulations since it will not be developed residentially by FWP. However, we do appreciate clarification regarding the Lake County regulations as described on pages 18, 20, and 24. If the exchange proceeds and if the Pablo tracts are ever planned for residential or other development, we hope the new landowner and the county will work together in a mutually constructive fashion.

- 8) We had two comments concerned about FWP disposing of any lands in the Mission Valley.

FWP response: The resource values and species available to hunt on the Griffiths property at Ninepipe WMA will be greater and more diverse than are currently available on the Pablo lands.

Final Environmental Assessment

There are no modifications necessary to the Draft Environmental Assessment based on public comment. The Draft Environmental Assessment, together with this Decision Notice, will serve as the final document for this proposal.

Decision

Based on the Environmental Assessment and public comments received at the public meeting and during the public comment period, it is my decision to proceed with the proposed action for the exchange of 223 acres at Pablo WMA with 240 privately owned acres adjacent to Ninepipe WMA, subject to final approval by the FWP Commission and the State Land Board.

I find there to be no significant impacts on the human and physical environments associated with this project. Therefore, I conclude that the Environmental Assessment is the appropriate level of analysis, and that an Environmental Impact Statement is not required.



James R. Satterfield, Jr., Ph.D.
Regional Supervisor

10/23/09

Date